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IN THE

Supreme Court of the United States

October Term, 1968
No. 968

JOSEPH E. STANEK,
Petitioner,

v.

CIVIL SERVICE COMMISSION OF THE CITY OF PITTSBURGH, AND CITY OF PITTSBURGH,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE COUNTY COURT OF ALLEGHENY COUNTY, PENNSYLVANIA AT NO. A 1744 OF 1967

ROBERT E. KLINE,
3400 Grant Bldg.,
Pittsburgh, Pa. 15219,

ARTHUR D. GATZ, JR.,
1708 Law & Finance Bldg.,
Pittsburgh, Pa. 15219,

Attorneys for Petitioner.

DATAVIA TIMES, APPELLATE COURT PRINTERS,
EDWARD W. SHANNON, REPRESENTATIVE,
5022 CARLYN DRIVE, PITTSBURGH, PA., 15236,
412-881-7463.

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CIVIL SERVICE COMMISSION OF THE CITY OF PITTSBURGH, AND CITY OF PITTSBURGH,

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PETITION FOR A WRIT OF CERTIORARI TO THE COUNTY COURT OF ALLEGHENY COUNTY, PENNSYLVANIA AT NO. A 1744 OF 1967

Petitioner prays that a writ of certiorari issue to review the Order herein of the County Court of Allegheny County, Pennsylvania at No. A 1744 of 1967 entered on March 5, 1968 affirming the decision of the Civil Service Commission of the City of Pittsburgh and dismissing petitioner's appeal therefrom.

The Opinions Below

The opinion of the County Court of Allegheny County, Pennsylvania, *In Re: Appeal of Joseph E. Stanek,* No. A 1744 of 1967 is printed in Appendix A hereto, p. 15. The opinion of the Civil Service Commission of the City of Pittsburgh is printed in Appendix B hereto, p. 34. The opinion of the County Court of Allegheny County, Pennsylvania, in the case of *Stanek v. Craig, et al.,* No. 962 of 1967 is printed in Appendix C hereto, p. 42. The order

of the Supreme Court of Pennsylvania issued on October 28, 1968 denying Petitioner's request for a writ of certiorari, *In Re: Appeal of Joseph E. Stanek,* No. 3012 Miscellaneous Docket, is printed in Appendix E hereto, p. 5[illegible].

Jurisdiction

The order of the County Court of Allegheny County, Pennsylvania at No. A 1744 of 1967 was entered on March 5, 1968. The order of the Pennsylvania Supreme Court denying Petitioner's request for certiorari was entered on October 28, 1968.

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257 (3).

Questions Presented

1. Whether City of Pittsburgh Ordinance No. 128 violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States because the Ordinance does not include within its scope all employees of the Department of Public Safety and the Bureau of Police of the City of Pittsburgh.

2. Whether City of Pittsburgh Ordinance No. 128 is an unconstitutional restriction on the right of free political association guaranteed by the First Amendment to the Constitution of the United States.

Constitutional Provisions and Ordinance Involved

A. Constitutional Provisions:

First Amendment

"Congress shall make no law . . . abridging the freedom of speech, or . . . the right of the people peaceably to assemble, . . ."

Fourteenth Amendment—Section 1

". . ., nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

B. Ordinance

City of Pittsburgh Ordinance No. 128, Ordinance Book Vol. 56, page 476, March 25, 1950, (File No. 283, Bill No. 531).

"An Ordinance—To forbid Police and other designated employees of the Department of Public Safety of the City of Pittsburgh from holding any political or public office.

The Council of the City of Pittsburgh hereby enacts as follows:

Section 1. That the following employees in the Dept. of Public Safety shall not hold any political or public office or be a candidate for political or public office in addition to their positions in the Department of Public Safety of the City of Pittsburgh, except as hereinafter provided:

Superintendent of Police
Assistant Superintendent
Inspector of Traffic
Inspectors of Police
Lieutenant of River Patrol
Lieutenants of Traffic
Lieutenants
Sergeants
Turnkeys
Patrolmen
Special Officers
Investigator Assigned to Criminal Court
Inspector of Detectives
Police Investigator of Child Delinquency
Captain of Detectives
Lieutenants of Detectives
Detectives
Precinct Detectives
Captain of Mounted Police

Woman Police Captain
Woman Police Lieutenant
Women Police.

Section 2. Definitions.—Holding any office in a political party shall be defined as membership in a ward, city, county or state committee of any political party, holding any office of such committees or any such political party, or the direction or management of any election campaign of any party or individual seeking an elected public office. 'Public Office' shall be defined as any office which is filled by the vote of the electorate.

Section 3. Any employee designated in Section 1 of this ordinance now holding any political or public office may continue to serve in the office in which he was elected or appointed until the expiration of the term for which he is now serving. Therefore, he shall not run for the election of or be appointed to any political or public office in any capacity whatever.

Section 4. Violation of any of the provisions of this Ordinance shall constitute grounds for dismissal.

Section 5. That any Ordinance or part of Ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed, so far as the same affects this Ordinance."

Statement of the Case

Petitioner, Joseph E. Stanek, was a police officer of the City of Pittsburgh from January 14, 1943 until he retired on May 20, 1968. On March 7, 1967, while still a Patrolman, Petitioner Stanek filed a Nomination Petition with the Allegheny County Board of Elections as a candidate for the office of Councilman of the City of Pittsburgh in the May, 1967 Primary Election. On March 13, 1967, Petitioner Stanek was notified by his Supervisor in the Bureau of Police, James W. Slusser, that by becoming a candidate for public office, he was violating City of Pittsburgh Ordinance No. 128 (cited herein at p. 3), which Ordinance

prohibits certain employees of the Pittsburgh Department of Public Safety and Bureau of Police from seeking or holding political or public office.

A Specification of Charges alleging a violation of Ordinance No. 128 was filed against Petitioner Stanek by David W. Craig, the Director of the Department of Public Safety. A Police Trial Board was convened pursuant to the Police Civil Service Act for Cities of the Second Class, 53 P. S. § 23531 *et seq.* to consider these charges.

Prior to the Police Trial Board Hearing, Petitioner Stanek, on March 31, 1967, filed a Petition for Declaratory Judgment in the County Court of Allegheny County, Pennsylvania under 12 P. S. § 831 *et seq.* (Declaratory Judgment Act). The petition alleged that Ordinance No. 128 violated the First and Fourteenth Amendments to the Constitution of the United States (Petition for Declaratory Judgment, In the County Court of Allegheny County, Pennsylvania, *Joseph E. Stanek v. David A. Craig, et al.* No. 962 of 1967 pp. 5-6, contained in the transcript of record). The Police Trial Board was stayed.

On April 20, 1967, after argument and submission of briefs, the Honorable Joseph H. Ridge of the County Court of Allegheny County entered an Opinion and Order in which he held that Petitioner Stanek did not have the right to have the legal issues raised by his petition determined in a declaratory judgment proceeding. Judge Ridge specifically declined to express an opinion on the constitutional questions presented. The Judge said:

> "This is not to overlook the fact that this case appears to pose an interesting and intriguing legal question, involving, it is suggested, an aspect of constitutional law which is probably deserving of appellate Court scrutiny for the mutual benefit of the petitioner and

those similarly employed, as well as the defendant city and its officers.

Because of our determination that the Uniform Declaratory Judgment Act and the cases interpreting it give the Petitioner no legal right to have the matters raised in his Petition determined in a declaratory judgment proceeding, we express no opinion on the constitutional question which the Petitioner poses''

(Opinion and Order, *Stanek v. Craig et al.* No. 962 of 1967, Appendix C. p 48.)

In May, 1967, Petitioner Stanek won the primary election for the office of Councilman of the City of Pittsburgh.

The Police Trial Board was reconvened and a hearing was held on July 11, 1967. Petitioner Stanek was found guilty of violating Ordinance No. 128 and he was suspended from duty for a six month period subject to reinstatement to the police force if at any time he should cease to be a candidate for public office (Appendix D). This penalty was approved by Mayor Joseph M. Barr of the City of Pittsburgh on August 7, 1967. Petitioner Stanek remained a candidate for office and remained suspended until after his defeat in the election for City Council in November, 1967.

An appeal from the Police Trial Board decision was taken to the Civil Service Commission of the City of Pittsburgh on August 7, 1967 pursuant to Section 8 of the Policemen's Civil Service Act, 53 P. S. § 23531 *et seq.* This appeal raised the issue of the constitutionality of Ordinance No. 128 (Paragraph 2, Appeal to Civil Service Commission, *City of Pittsburgh v. Joseph E. Stanek* contained in transcript of Record).

A Public Hearing was held before the Civil Service Commission on August 24, 1967 and on September 12, 1967,

the Commission affirmed the decision of the Police Trial Board and dismissed Petitioner's appeal. The Commission declined to rule on the constitutionality of Ordinance No. 128 on the grounds that as an administrative agency it lacked the power to pass on constitutional issues. (Paragraph 1, Opinion of the Civil Service Commission, Appendix B, p. 39).

Petitioner Stanek appealed the decision of the Civil Service Commission to the County Court of Allegheny County. This petition for appeal alleged that Ordinance No. 128 violated the First and Fourteenth Amendments to the Constitution of the United States (Appeal From Decision of the Civil Service Commission, City of Pittsburgh; In the County Court of Allegheny County, Pennsylvania No. A 1744 of 1967, Paragraphs 6, a, b, e—pages 2, 3 contained in Transcript of Record).

The County Court conducted hearings on this appeal on November 1, 1967, January 19, 1968 and February 19, 1968. During the initial hearing, the Greater Pittsburgh Chapter of the American Civil Liberties Union requested and received permission to participate in the case as *amicus curiae* on the theory that fundamental questions about the First and Fourteenth Amendments were involved (Official Stenographic Record of Proceedings, In the County Court of Allegheny County, Pennsylvania, *Stanek v. Civil Service Commission,* No. A 1744 of 1967, pages 16-17, contained in the Transcript of Record). On March 5, 1968, the Honorable Judge Lencher issued an Opinion and Order denying the appeal. Judge Lencher stated in the Opinion that, "We find no constitutional or other flaw in Ordinance No. 128" (Opinion of Judge Lencher, *In Re: Appeal of Joseph E. Stanek,* No. A 1744 of 1967, Appendix A, p. 19).

Because the Policemen's Civil Service Act, 53 P. S. S23531 *et seq.*, makes no provision for appeal from a County Court decision, the Supreme Court of Pennsylvania was petitioned for a writ of certiorari to the County Court from this Order and Opinion. This Petition raised the following questions concerning the validity of Ordinance No. 128:

"QUESTIONS INVOLVED

1. Whether Ordinance No. 128 of the City of Pittsburgh is unconstitutional because it violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and article III, Section 7 of the Pennsylvania Constitution?

2. Whether Ordinance No. 128 of the City of Pittsburgh is unconstitutional because it violates the First Amendment freedoms of the Petitioner?

3. Whether Ordinance No. 128 of the City of Pittsburgh is invalid as an attempt by a municipal corporation to legislate in an area in which it does not have the power to do so?

4. Whether Ordinance No. 128 of the City of Pittsburgh is invalid as an attempt by a municipal corporation to legislate in an area which has been preempted by the state legislature?

5. Whether Ordinance No. 128 of the City of Pittsburgh is so vague, indefinite and uncertain that it is invalid?"

(Petition for Writ of Certiorari pursuant to Rule 68½, *In Re: Appeal of Joseph E. Stanek,* No. 3012, Miscellaneous Docket, Supreme Court of Pennsylvania, p. 2).

This Petition was denied on October 28, 1968 (Appendix E). Petitioner, having exhausted all of the administrative and legal appellate procedures available to him, now petitions this Honorable Court for a Writ of Certiorari.

Reasons for Granting the Writ

1. Ordinance No. 128 is an unconstitutional violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States because the Ordinance does not include within its scope all employees of the Department of Public Safety and the Bureau of Police of the City of Pittsburgh.

The Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States requires that all people in like circumstances and conditions be treated alike under the law, *Reynolds v. Sims,* 377 U. S. 533 (1964). In order for class legislation to be valid, the classification must be reasonable and not purely arbitrary or capricious, *Weeks v. Children's Hospital of Philadelphia,* 200 F. Supp. 77 (E. D. Pa. 1961). Consideration must be given to classifications to determine if they constitute invidious discrimination, *Loving v. Virginia,* 388 U. S. 1 (1967). The Equal Protection Clause also guarantees that a law applicable to a particular class applies equally to all those who come within the classification as established by the law, *Morris v. Crumlish,* 239 F. Supp. 498 (E. D. Pa. 1965).

In the case at hand, the classification made by Ordinance No. 128 is arbitrary and is not based upon reasonable or rational grounds. It applies only to policemen and not to other employees of the Department of Public Safety of the City of Pittsburgh exercising similar duties. In addition, the Ordinance prohibits only certain employees of the Bureau of Police from becoming a candidate for or holding a political or public office. Within the Bureau of Police there are numerous positions not covered by the terms of the Ordinance, a few of which are:

Police Traffic Captain
Police Firearms Instructor
Police Photographer
Canine Instructor
Police School Instructor
Captain of Communications and Records

The Policemen filling these positions would be free to engage in political activity while other policemen could not do so. There is no reasonable basis for such a discrimination among members of the same class. It is submitted that Ordinance No. 128 is arbitrary, capricious and discriminatory.

2. Ordinance No. 128 is an unconstitutional restriction on the right of free political association guaranteed by the First Amendment to the Constitution of the United States.

The right of an individual to engage freely in political activity is one of the most important safeguards for the maintenance of our democratic system of government. This right is guaranteed by the First Amendment to the United States Constitution and it has been applied to the States through the Fourteenth Amendment. This Court described this right as follows in *Sweezy vs. New Hampshire,* 354 U. S. 234, 250 (1957):

> "Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. . . ."

The protection of the First Amendment extends to public servants, *Wieman vs. Updegraff,* 344 U. S. 183 (1952).

A statute which appears to restrict a First Amendment right is not entitled to the strong presumption of validity which courts usually give legislative acts, *Schneider vs. New Jersey,* 308 U. S. 147 (1939). In addition, the restrictions contained in such a statute must be very specific in nature. This requirement was stated as follows by this Court in *N. A. A. C. P. vs. Button,* 371 U. S. 415 at 433 (1963):

> "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."

A Statute restricting a First Amendment right will not be upheld unless the State can shcw a compelling government interest which would warrant the restriction. This Court said in *Sherbert v. Verner,* 374 U. S. 398 (1963) at 406-407:

> "We must next consider whether some compelling state interest enforced in the eligibility provisions of the South Carolina statute justifies the substantial infringement of appellant's First Amendment right. *It is basic that no showing merely of a rational relationship to some colorable state interest would suffice; in this highly sensitive constitutional area, '(O)nly the gravest abuses, endangering paramount interest, give occasion for permissible limitation,' . . .*" (Emphasis added).

There have been several recent decisions by State Courts dealing with statutes which were almost identical to Ordinance No. 128. In *Minielly vs. State of Oregon,* 242 OR 490, 411 P. 2d 69 (1966), the plaintiff, a deputy sheriff, was dismissed from his civil service position because he had announced that he would be a candidate for the office of sheriff. The Statute under which he was dismissed provided in part as follows:

> ". . .No person employed under civil service, . . . shall be a candidate for popular election to any public office, unless such person immediately resigns from the position which he then holds under civil service, . . ." (ORS 241. 520) (242 OR 492, 411 P. 2d 70).

The Supreme Court of Oregon declared this statute unconstitutional as a violation of the plaintiff's First Amendment right of political freedom. The Court said at 242 OR 507-508, 411 P. 2d 77-78:

> ". . . We hold the statutes unconstitutional because of overbreadth . . . *The present statute encompasses too broad a scope and would prevent the plaintiff from becoming a candidate for state, federal or nonpartisan office.* It cannot be demonstrated that the good of the public service requires all the prohibitions of the present statute." (Emphasis added).

The Supreme Court of California considered a similar statute in *Kinnear vs. City and County of San Francisco*, 61 Cal. 2d 341, 392 P. 2d 391 (1964). In this case, the plaintiff, a deputy sheriff, announced his candidacy for sheriff and was dismissed under Section 5 of San Francisco Charter. This section provided that:

> "Any appointive officer or employee of the city and county who shall become a candidate for election by the people to any public office shall automatically forfeit such city and county office or position" (61 Cal. 2d 342, 392 P. 2d 392).

The Court, in declaring this Section unconstitutional as a violation of the First Amendment, said at 61 Cal. 2d 343, 392 P. 2d 392:

> "Although the San Francisco Charter provision is not uncertain and is directed solely to the activity of seeking public office, it is no less subject to the criticism that *it relates alike to all public offices, whether they be partisan or nonpartisan in character and whether they be San Francisco offices or national or state*

> *offices. San Francisco has not, as it must in order to prevail, show a compelling need to restrict the fundamental right involved on such a sweeping scale"* (Emphasis added).

The California Supreme Court declared Section 41 of the Alameda County Charter unconstitutional in *Fort vs. Civil Service Commission of the County of Alameda,* 61 Cal. 2d 331, 392 P. 2d 385 (1964), decided the same day as *Kinnear, Supra.* Section 41 was a broad prohibition against county employees running for public office. The Court said at 61 Cal. 2d 336, 392 P. 22,388:

> "It should be emphasized that *the restrictions do not relate solely to measure and candidates in the particular county but to all elections, including national and state elections and those conducted by local entities other than Alameda County. Moreover, Section 41 is not limited to conduct regarding partisan offices and issues but relates equally to all candidates and questions, whether or not identified with a political party"* (Emphasis added).

The Court distinguished the case of *United Public Workers of America (C. I. O.) vs. Mitchell,* 330 U. S. 75 (1947) (upholding the Hatch Act) on the basis that the Hatch Act was aimed only at active participation in partisan politics.

In view of these cases, it is submitted that Ordinance No. 128 is too broad a restriction on the First Amendment right of free political association. The Ordinance is a sweeping prohibition against holding or being a candidate for "any political or public office" and it defines public office as "any office which is filled by the vote of the electorate". Thus, the Ordinance would apply to any city, county, state or national election whether partisan or non-partisan. This prohibition is even broader than those de-

nounced in *Minielly, Kinnear,* and *Fort, supra.* In fact, it is difficult to conceive of a statute or ordinance that could be less specific and broader in scope than Ordinance No. 128. Under this Ordinance, the most innocent venture into nonpartisan public life could result in dismissal. The Ordinance should be declared unconstitutional.

Conclusion

For the reasons stated herein, Petitioner requests the opportunity to prove that Ordinance No. 128 is unconstitutional.

Because of Petitioner's suspension under this Ordinance, he has been deprived of wages to which he would have been entitled, and his pension benefits have been reduced.

WHEREFORE, it is respectfully prayed that a writ of Certiorari be granted to review the order of the County Court of Allegheny County, Pennsylvania.

Respectfully submitted,

ROBERT E. KLINE,
ARTHUR D. GATZ, JR.,
Attorneys for Petitioner.

Certificate of Service

I hereby certify that I have this day served the within documents upon all parties of record in this proceeding by mailing via First Class Mail, postage pre-paid, a copy to each party.

ARTHUR D. GATZ, JR.

Dated: January 20, 1969,
Pittsburgh, Pennsylvania.

APPENDIX A

IN THE
COUNTY COURT
OF ALLEGHENY COUNTY, PENNSYLVANIA

In Re: Appeal of JOSEPH E. STANEK.

No. A 1744 of 1967.

FINDINGS, CONCLUSIONS, DISCUSSION.

LENCHER, *P. J.*

Since the County Court of Allegheny County has jurisdiction in such county to hear cases of appeal from the Civil Service Board and/or Commission of the municipality named, to wit, the City of Pittsburgh, 17 Purdon's, Courts, Section 626, Subsection (m), page 357 in open court we heard some of the testimony hereinafter mentioned. The factual core of the situation involves no real disputes. This is an appeal pursuant to the Policemen's Civil Service Act for cities of the second class, Act of August 10, 1951, P. L. 1189, Section 7, as amended, 53 P. S. 23537, from a decision of the Civil Service Commission of the City of Pittsburgh which upheld the action of a Police Trial Court of the Bureau of Police of the City of Pittsburgh. Appellant, Joseph E. Stanek, is a police officer in the Bureau of Police of the City of Pittsburgh.

On March 7, 1967, Appellant filed petitions for nomination as a candidate for the office of Councilman of the City of Pittsburgh. He was then advised by the Superintendent

of Police, James W. Slusser, in a letter dated March 13, 1967, that to do so would be in violation of his oath of office as a police officer and in violation of City of Pittsburgh Ordinance No. 128, approved March 25, 1950. Section 1 of this Ordinance provides as follows:

> "The following employees in the Department of Public Safety shall not hold any political or public office or be a candidate for political or public office in addition to their positions in the Department of Public Safety of the City of Pittsburgh, except as hereinafter provide
>
> Superintendent of Police
> Assistant Superintendent
> Inspector of Traffic
> Inspectors of Police
> Lieutenant of River Patrol
> Lieutenants of Traffic
> Lieutenants
> Sergeants
> Turnkeys
> Patrolmen
> Special Officers
> Investigator Assigned to Criminal Court
> Inspector of Detectives
> Police Investigator of Child Delinquency
> Captain of Detectives
> Lieutenants of Detectives
> Detectives
> Precinct Detectives
> Captain of Mounted Police
> Woman Police Captain
> Woman Police Lieutenant
> Women Police."

On March 21, 1967, Specifications of Charges were filed with the Director of the Department of Public Safety of the City of Pittsburgh charging Appellant with having violated both Ordinance No. 128, approved March 25, 1950, and the oath which he took upon becoming a member of the

Bureau of Police. On the same day, the Director ordered that a Police Trial Court hold a hearing on the charges. Petitioner was served, on March 22, 1967, with a copy of the Specifications of Charges and notice of the hearing.

On March 31, 1967, the day of the scheduled Trial Board hearing, the City and other Respondents were served with a Petition for Declaratory Judgment pursuant to the Declaratory Judgment Act, Act of June 18, 1923, P. L. 840, as amended, 12 P. S. 831-853, seeking to test the constitutionality of Ordinance No. 128, approved March 25, 1950.

Thereupon, the Trial Court was postponed until the County Court of Allegheny County could act upon this Petition.

On April 20, 1967, the Honorable Joseph H. Ridge handed down an Opinion and Order holding that Police Officer Stanek had no legal right to have the issue of the constitutionality of the Ordinance determined in a Declaratory Judgment proceeding. *Stanek vs. Craig,* No. 962 of 1967, County Court of Allegheny County.

During the time interval between the date originally set for the Trial Court and the date on which Judge Ridge rendered his decision, Police Officer Stanek became ill and was hospitalized. The hearing was delayed by Police Officer Stanek's recovery until July 11, 1967.

At that Trial Court hearing the records of the Department of Elections of Allegheny County, concerning the Appellant's candidacy, were placed in evidence. It was stipulated that Appellant was, and continued to be, at that time, a candidate for the office of Councilman of the City of Pittsburgh.

The Police Trial Court found Police Officer Stanek guilty as charged, and proposed the following penalty to the Director of Public Safety:

> "The punishment set forth by this Board is a six-month suspension from this date. However, if at any time, he ceases to be a candidate for public office, at any time during this suspension, he is to be reinstated to his position in the Bureau of Police, Pittsburgh, Pennsylvania, immediately."

On August 7, 1967, the Trial Court Decision was approved by Mayor Joseph M. Barr of the City of Pittsburgh and thereupon became final. On the same date Police Officer Stanek, through his attorneys, filed a Petition of Appeal with the Civil Service Commission of the City of Pittsburgh, pursuant to Section 8 of the Policemen's Civil Service Act, Act of August 10, 1951, P. L. 1189, 53 P. S. 23538. A hearing was held by the Commission on August 24, 1967, at which all parties were afforded the opportunity to present additional testimony.

On September 12, 1967, The Civil Service Commission, after reviewing the record before the Police Trial Court and the additional evidence presented at the August 24, 1967, hearing, affirmed the decision of the Trial Court and dismissed the appeal.

Our hearing in open court was the next step. Counsel have presented learned oral arguments and excellent briefs. We repeat that other than a report now of record giving the voluminous information as to all officers and employees of the Bureau of Police, Department of Public Safety, City of Pittsburgh, for the years 1950 to 1967 inclusive which are not covered by the provisions of the Ordinance No. 128, approved March 25, 1950, there is no other pertinent evidence. The challenged Ordinance provision, Ordinance

No. 128 of the City of Pittsburgh approved March 25, 1950, prohibits the employees stated in the Pittsburgh Bureau of Police from being a candidate for or holding political office. Some matters by way of argument in the City's brief are not based on testimony anywhere of record, newspaper comments, a presentment of the Allegheny County Grand Jury and our findings and conclusion in no way relate thereto.

We find no constitutional or other flaw in Ordinance No. 128. The amendments and modifications that have followed in no way destroy the basis for our holding, the intention of the City lawmakers is properly announced regardless of specialized titles to particular positions. For the purpose of fixing salaries or compensation the legislature has indicated division in classes and officers by the provisions of the Act of March 25, 1929, P. L. 67, Purdon's, Cities of the Second Class, 23402.

It simply can no longer be doubted that under the Charter Act of the City of Pittsburgh of March 7, 1901, P. L. 20 and its amendments, and the Civil Service provisions that have followed, the City of Pittsburgh may proceed thr ugh the Police Trial Board to such a recommendation of suspension as we have before us here at Bar, and when such suspension is approved by the Mayor and Civil Service Commission an appeal then follows to the County Court of Allegheny County where testimony may be taken *de novo* under the provisions of the Act of August 10, 1951, P. L. 1189, Section 8, 53 Purdon's 23538. Some of the many cases wherein our Supreme Court has clearly sustained the power of our City Council to enact the legislation here under attack and to set up the scheme of Civil Service and cognate requirements are reviewed in *Baker Case,* 409 Pa. 143, 185 A. 2d 521. When discussing a similar

matter in *O'Gorman Appeal* involving the provisions for suspension and dismissal under the *Phila. Civil Service Commission,* 187 A. 2d 581, 409 Pa. 571, our highest Appellate Tribunal repeated the general guidance which we believe we are here following. Indeed, on June 29, 1967, our Supreme Court declared in *Baxter vs. Phila.,* 231 A. 2d 151, 426 Pa. 240—affirming the dismissal of a motion for a new trial—our Supreme Court in holding that the Philadelphia Civil Service regulation validly reinstated a 48-hour week said, in part, that "Civil Service regulations constitute no valid attempt to repeal prior ordinances; that such Charter vested in that City Administration responsibility for Civil Service regulations, even to the extent of superseding inconsistent statutes of the General Assembly" and strongly underscoring the duty and power of the City in this connection. We observe that our highest Appellate Court therein (Note 11 of page 253) underscored the difference, pointed out in *Iben vs. Monaca Borough, supra,* "between the terms of employment of uniformed and other employees as not constitutionally invalid discrimination." Indeed, on the same day in another opinion by Mr. Justice Roberts in *Geary vs. Allegheny County Retirement Board,* 231 A. 2d 743, 426 Pa. 254, the Supreme Court approved a legislative alteration of retirement laws, one which reduced the age at which Allegheny County policemen are entitled to receive a retirement allowance, and recalling the strong presumption in favor of constitutionality said, *inter alia,* that "the duties of an interest protected by police are of a sufficiently distinct character from those of other Governmental employees to justify different terms of employment."

In view of the careful order of the municipal officials here pointing only to the Appellant's political activities as

a candidate for City Council, clearly indicating that it was this activity alone that resulted in the suspension for and during the duration of that activity only, the following language is also, in part, a summation of the core of the issue before us; it concerns classification of chiropractors separately from physicians, and says, at the conclusion of the Opinion approving distinction made between physicians and chiropractors set by the legislature and followed by the State Secretary of Revenue—"Classification for the purpose of legislating has been recognized as permissible under the Constitution of 1874 since *Wheeler vs. Phila.,* 77 Pa. 338 (1875). An act which applies to all the members of the class is general and not special, and thus does not violate Article III, Section 7 of the Pennsylvania Constitution. *Commonwealth vs. Hanely,* 15 Pa. Superior Ct. 271, 280 (1900). It is only when the classification is not founded on real and substantial distinctions that it becomes unconstitutional. *Young vs. Department of Public Instruction,* 195 Pa. Superior Ct. 153, 159 (1932). There is a real and substantial distinction between the treatment offered by a chiropractor and that offered by a physician as defined in the Statutory Construction Act, *supra.* There is also a significant difference in the education and training required. The classification made by the legislature is constitutional. *Commonwealth vs. Allison, supra,* 155 Pa. Superior Ct. 290, 38 A. 2d 535 (1944); Terenzio vs. Devlin, 361 Pa. 602, 65 A. 2d 374 (1949)." *Howe vs. Smith,* 199 A. 2d 521, 203 Pa. Sup. 212.

In *Warren vs. Phila.,* 115 A. 2d 218, 382 Pa. 380, our Supreme Court considering statutes or ordinances in many fields did indeed indicate that their provisions must not invade fundamental liberties and made the following statement (Page 385)—even where both a State statute and a

Municipal ordinance have legislated as to the same subjects, both are upheld if they be not in conflict—we upheld the right of the City of Pittsburgh to regulate restaurants within its limits even though the State also regulated in regard thereto throughout the Commonwealth, while the Superior Court has sustained in *Puntureri vs. Pgh.*, 84 A. 2d 516, 170 Pa. Superior 151, cited in *Warren vs. Phila.*, the police power of that city upheld as to an emergency rent control ordinance, 115 A. 2d 218, 382 Pa. 380, "the right of the City of Pittsburgh to establish more stringent liquor requirements than those required by the Commonwealth, peculiar local conditions permit such regulations. Unless statute and ordinances each seeks to impose regulations under the same power, and in like manner and extent, the statute does not invalidate the ordinance merely because both deal with the same subject matter."

We believe the Ordinance is clearly valid on all counts raised by the Appellant including his argument that the Commonwealth because of certain specific prohibitions, inhibitions and requirements for conduct as to policemen and patrolmen as preempted this field. We believe our highest appellate court makes this compellingly clear in Harris, *et al.*, vs. Dickson City Borough, 216 A. 2d 329, 420 Pa. 259, when it declares *inter alia* that "Where a statute regulating some industry or occupation is silent as to whether municipalities are or are not permitted to enact supplementary legislation or to impinge in any manner upon the field entered upon by the State, the question whether municipal action is permissible must be determined by an analysis of the provisions of the act itself in order to ascertain the probable intention of the legislature in that regard; a municipal ordinance cannot be sustained to the extent that it is contradictory to, or inconsistent with, a

State statute; if the general tenor of a statute indicates an intention on the part of the legislature that it should not be supplemented by municipal bodies, that intention must be given effect and the attempted local legislation held invalid.

Moreover it is well to observe the following guidance of our Supreme Court—In this connection, it is necessary to note that this Court has often held that there is a legal presumption that "(m)unicipal officers are presumed to have properly performed their duties and to have taken the steps necessary to give validity to their official acts: (citing cases)." Miners S. Bank vs. Duryea Borough, 331 Pa. 458, 463, 200 Atl. 846 (1938). "The presumption is rebuttable by affirmative evidence of irregularity. . . . '(T)here can be no presumption of official irregularity, and unless the presumption of regularity is rebutted, it is conclusive.'" Falkinburg vs. Venango Township, 297 Pa. 358, 362, 363, 147 Atl. 62 (1929).

There is an established presumption as to the validity of ordinances: Whitpain Twp. vs. Bodine, 94 A. 2d 377, 372 Pa. 509; and in construing the ordinance we adopt that interpretation which will prevent any conflict with the Constitution, Fidelity vs. Hines, 10 A. 2d 553, 337 Pa. 48; Hotel, *et al.* vs. Ross, 23 A. 2d 737, 343 Pa. 578.

The construction to be adopted should be in line with the purpose of all similar enactments, original and amendatory, and all legislation thus affecting the same subject matter are considered in *pari materia.*

The cases are legion in Pennsylvania to the effect that while the determination of the lawmakers is not conclusive, but is subject to judicial review, Harbold vs. City, 49 A. 2d 817, 355 Pa. 253, this does not eclipse the rule that

where the matter or problem is debatable judges may not substitute their ideas for that of the lawmakers; that neither freedom of speech nor other basic rights are abridged by provisions which forbid certain public employees to engage actively in politics. Duffy vs. Cooke, 86 A. 1076, 239 Pa. 427. Once the lawmakers have the power to classify, reasonably not arbitrarily, then neither the amendments nor provisions of our State Constitution affect validity of provisions making reasonable classifications for legitimate purposes of legislation. Harr vs. Boucher, 15 A. 2d 699, 142 Pa. Sup. 114.

Altogether aside from general Civil Service provisions, municipalities have frequently provided that no person employed in the police or fire department shall be suspended or removed except for various specific and general reasons indicated including "engaging or participating in the conducting of any political or election campaign otherwise than to exercise his own right of suffrage." A person so employed shall not be removed for religious, racial or political reasons, First Class Township Code, 53 Purdon 55, 64, 45. There is no inconsistency in the establishment of specific provisions as to residents and such provisions may not be urged as outlawed because Civil Service Statutes have preempted them. The Borough Code declares such provisions, including residence of police officers, as qualification for appointment, 53 P. S. 46, 179 *et seq.;* Gagliardi vs. Ambridge Borough, 163 A. 2d 418, 401 Pa. 141. Within that Borough Code under all of such provisions, general and specific—the prohibition relative to political activities is all embracing, the only thing a police officer is permitted to do is to exercise his own right of suffrage. The doing of any affirmative act in connection with any political campaign or election is pro-

hibited, Dougherty vs. Civil Ser. Phoenixville, 35 D & C 2d 115, discussing much of the guidance in the Appellate Court cases and pointing particularly to political activity of a Borough Police Officer in violation of Section 1184 of our Borough Code as specifically amended by the Act of July 15, 1957, P. L. 16, 21.

Civil Service provisions have sometimes been applied only to a limited number of police officers; Haverford, *et al.,* vs. Siegle, *et al.,* 28 A. 2d 786, 346 Pa. 1, establishing Civil Service for policemen in Townships who had only three or more paid police officers, while Iben, *supra,* sustained the constitutionality of the Act of May 14, 1937, P. L. 632, 53 P. S. 327, which granted to a Borough policeman or fireman injured in the performance of his duties his full salary for the period during which a policeman or fireman was disabled, less Workmen's Compensation payments received, even though that provision was limited to only two classes of employees, to wit, policemen and firemen, and did not apply to all municipal employees generally. We are permitted, at most, to consider whether the lawmakers had any reasonable ground for the particular legislation, we are not to question its wisdom unless there can be found no reasonable ground for it. Chester, *et al.,* vs. Commonwealth, *et al.,* 17 A. 2d 212, 341 Pa. 49; Seabolt, *et al., vs. Commissioners,* 41 A. 22, 187 Pa. 318. A wide discretion is conceded in classifications, they may be subjected to special forms of regulation. If there are substantial differences between and among the occupations separately classified, we are to sustain them and "such differences need not be great" said Mr. Justice Roberts in State Board vs. Jackson, 283 U. S. 527, 539.

Indeed while we do not rest our decision on this rule, once we find that the Council had authority to act upon

the subject matter then the view that it is an unreasonable classification is irrelevant. Ligonier, *et al.*, vs. Latrobe Borough, 65 A. 548, 549, 216 Pa. 221, 34. Other facets of the problem can be seen in Witney vs. Lebanon City, 85 A. 2d 106, 369 Pa. 308, 312. We disclaim any right to question this legislation unless it could be said there can be found no reasonable ground for it at all; the test is not wisdom but good faith in the classification. Seabolt, *et al.*, vs. Commissioners, 41 A. 22, 187 Pa. 318. The Supreme Court clearly directs that lawmakers may legislate for public employees as a class. Commonwealth vs. Perkins, 21 A. 2d 45, 342 Pa. 529. "When a law challenges as prohibited special legislation the reasonableness of the classification is for legislature in the first instance; the duty of the Court is limited to considering whether the legislature had any reasonable ground for making it." Chester County, *et al.*, vs. Commonwealth, *et al.*, 17 A. 2d 212, 341 Pa. 49. The construction here urged by the City is not unreasonable, not unworkable, the City Fathers adopted it, this review in Court cannot declare, on this record, that it is so unreasonable that this Court should set it aside. And the same presumption as to constitutional validity and propriety, which apply to an Act of our General Assembly, are equally applicable to municipal ordinances. Bilbar, *et al.*, vs. Easttown, *et al.*, 141 A. 2d 851, 393 Pa. 62. Whether or not the legislative grants to the City of Pittsburgh are of such specific character that the ordinance, now attacked, may not be impeached as invalid, or whether the ordinance is looked upon as *pari materia,* with the City's Civil Service ordinances and regulations, this Court cannot set aside the inhibition challenged applicable as it is to the entire class immediately affected on the theory that a Court might deem the prohibition to be unreasonable, and against sound policy. We see no reason for striking down

the specific section prohibiting the Appellant from political activity; and possible invalidity of other sections will not destroy the purpose of the language specifically applicable to the Appellant; in the absence of any challenge as to impropriety or venality, any imputation that could be implied—none is expressed—as to the motives of the members of Council in voting for the Ordinance clearly within their corporate powers may not invalidate the legality of this Ordinance. Borough vs. Marks, 59 Pa. 253.

Our Supreme Court, once again, sustained legislative enactments of the Sunday closing laws, parent Act of June 24, 1939, P. L. 872, amended September 27, 1961, P. L. 1695, 18 P. S. 4699.15. Our highest Appellate Court—as it had already done—sustained the various prohibitions on Sunday sales and also sustained the exceptions and/or exemptions therein in Betera, *et al.*, vs. Masters, Advance Reports, January 12, 1968, 428 Pa. 20, declaring, at page 43, in language *inter alia* quoted from the Supreme Court of the United States, that it was "within lawmaking power to legislate; that evils in the same field may be of different dimensions and proportions requiring different remedies or the reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind. The legislature may select one phase of the field and apply a remedy there, neglecting the others."

It has remained the unchanging principle in Pennsylvania, as stated in Commonwealth vs. Lindsay, 330 Pa. 120, 123, 198 A. 635, ". . . It is a tenet of good government that except in those cases where the public welfare requires that an official charged with important governmental functions should be protected against interference on the part of the executive and in those cases where special

classes of public servants, such as *policemen and firemen,* are placed under civil service protection, the power of removal is correlative with the power or appointment."

Both in the specific language of the Ordinance clearly based on such power as has repeatedly been implemented and sustained by our Supreme Court and in all the other rules and Civil Service regulations with which this specific Ordinance is in *pari materia,* we find no necessity for considering the traditional tests for determination of legislative intention announced in our Statutory Construction Act, 46 Purdon's 551.

These provisions taken together do not expressly or by necessary implication deny or impede the Appellant's right to speak; what the Ordinance provisions and other relevant municipal provisions with which we are here concerned actually point to, is the supposed and unsupportable right of a policeman to run for public office, to be politically active with a political group.

In McCrory vs. Phila., 345 Pa. 154, 25 A. 2d (1942), in discussing the constitutionality of a similar provision in the Philadelphia Charter Act, the Supreme Court said:

> An employer, whether an individual or a municipality, is entitled to have the best service of which an employee is capable. And if, in the judgment of the legislature, political activity on the part of clerks or employees of a city is likely to interfere with efficient public service, there would appear to be no legal reason why such activity should not be restrained or prohibited, so long as the individual elects to continue in the public service. If such restriction is distasteful to him, he has the alternative of seeking other employment. *He is not, by the act, prohibited from engaging in free speech, or otherwise communicating or expressing his personal views upon political subjects, urging these views upon others in an effort to influence them to vote for the candidates of his choice, nor is his right to the free*

exercise of the elective franchise in any manner restricted.

> The act does not impose any restriction upon the actions, political or otherwise, of the individual as such, but simply upon the employee of the municipality while holding office or employment thereunder. It is simply a condition of his employment. If he does not like or is not willing to submit to the restriction upon his personal liberty, he need not accept nor continue in the employment of the city. If he does accept or continue in such employment, he waives his right to that freedom of action which he enjoys when otherwise employed (Emphasis added).

The insistence by the Government of the United States in similar restrictions is revealed in the Hatch Act. Mr. Justice Reed, speaking for the Court, indicated, 330 U. S. at 95-96:

> The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery . . . (T)his Court must balance the extent of the guarantees of freedom against a congressional enactment to protect a democratic society against the supposed evil of political partisanship by classified employees of the government.

> Would the police force be visited by consequences not healthy to it, the public welfare by political candidacy of patrolmen? Politics being politics, human beings being decidedly human, would the results involve such dissension, disruption within the service and through the city as to be desirable? Might the general ill feeling, feuds, inflammatory language and such results frequently observed in what is otherwise acceptable and understandable in our civic life, be detrimental and hardly desirable in a city employment and particularly in its police force? We believe the least that may be said is that these questions are debatable. The

City of Pittsburgh without striking down the right of franchise or of free speech seeks by this direct expression in the Ordinance at bar to avoid such a debate, has plainly indicated it will invite no such possibilities. This patrolman knowingly violated the injunction against political activity. He did so under an expressed mandate not to be a political candidate, a provision parallel with and in no way contradictory to or preempted by any state provision. The municipal officials, executives, police and Civil Service here acted with commendable care in limiting their instructions to the patrolman and in the proceedings that followed because he violated them.

Assuming that the proceedings before us are not totally moot there remaining as personal to the patrolman and therefore cognizable in this proceeding by and before us—the question of salary denied him only during suspension, we find and conclude now that he has been returned to his position after the end of the election in November of 1967 when he was not elected, on the entire record carefully considered that we are powerless to intervene.

In recourse to his proceedings by way of Declaratory Judgment here in our court, denied by our colleague Judge Ridge—properly we believe—from which the patrolman took no appeal; in his return to his place on the police force, may we find estoppel on his part such as might now summarily determine his appeal? The parties have not litigated this question and we resolve it by proceeding to a determination of this appeal at bar. We are confronted with other matters that might clearly be described as moot. Looking to the propriety of the suspension during the patrolman's candidacy and of course the loss of his salary or wages therein, we have the guidance of our Supreme Court as follows:—in Bell Appeal, 152 A. 2d 731, 396 Pa. 591—The Supreme Court said: "Although on

appeal to the County Court of Allegheny County under the Act of 1951, *supra*, as amended (applicable to Second Class Cities) from an order of the Civil Service Commission of the City of Pittsburgh, the proceeding is *de novo*, the court does not have an absolute discretion to exercise in adjudging the merit and validity of the Civil Service Commission's order. It is necessary that the court give due respect and weight to the action of the duly constituted municipal body which is authorized to act with respect to charges against members of the City's police force. In Ditko Appeal, 385 Pa. 435, 436, 123 A. 2d 718, which involved the dismissal of a policeman, under the Third Class City Act, for conduct unbecoming an officer, the court of common pleas of Berks County affirmed the order of dismissal by the city council which, under the Third Class City Act, occupies the position of the Civil Service Commission under the Act applicable to Second Class Cities. We affirmed expressly on the opinion of the court below (reported 5 Pa. D. & C. 2d 569), and thereby approved, *inter alia*, the following (pp. 576-577): 'In spite of the fact that the matter is before us *de novo*, the court should not lightly set aside an order of dismissal rendered at the hands of a duly-elected and constituted body of public officials (there the City Council) who are charged with conducting the affairs of the police department and maintaining necessary discipline so as to assure the functioning of the vital protection of an efficient police force.' Likewise, in Caldwell vs. Fairley, 363 Pa. 213, 215, 69 A. 2d 135, where we again affirmed on the opinion of the court below, which, after quoting from Thomas vs. Connell, 264 Pa. 242, 246, 107 A. 691, to the effect that 'What constitutes ample cause for removal within the limits fixed by the act must necessarily be largely a matter of discretion on the part of the head of the department' added, 'This is especially true of the police service where a

semimilitary discipline is to be encouraged and greater strictness of enforcement and severity of punishment is to be permitted.' "

As the Supreme Court observed in the case of a police lieutenant when a trial *de novo* was held here in our court as required by the Act of August 10, 1951, P. L. 1189 Section 8, 53 P. S. 23538, the statute provides that a policeman may even be discharged for just cause which shall not be political or religious and gives as an example of just cause unbecoming official or personal conduct. Act of August 10, 1951, *supra*, P. L. 1189 Section 7, 53 P. S. 23537. The Supreme Court adds in Baker Case, 185 A. 2d 521, 409 Pa. 143, "In Zeber Appeal, 398 Pa. 35, 43, 156 A. 2d 821, 825 (1959), we defined 'unbecoming conduct' on the part of a policeman or fireman as that 'which adversely affects the morale or efficiency of the bureau to which he is assigned' or 'has a tendency to destroy public respect for municipal employees and confidence in the operation of municipal services.' "

The Supreme Court said as to the question before the Board as to what punishment to impose that this writer "misconceived the role of our court under the Civil Service Act. We are not to make independent determinations of what follows a breach of duty," then citing the language *supra* from that court's discussion in Bell Appeal. It will be seen that the Supreme Court was there discussing not the limited dismissal only for a time wherein the misconduct to wit the carrying on of a political campaign existed but was there concerned with the discretion and judgment of the municipal, police, and Civil Service officials as to total dismissal from service. The Supreme Court said—"Under the scheme established by the civil service acts, primary responsibility and decision as to the

methods necessary to uphold police morale and efficiency and to maintain public confidence in the police department resides in the municipal officials. See Caldwell vs. Fairley, 363 Pa. 213, 69 A. 2d 135 (1949) and Thomas vs. Connell, 264 Pa. 242, 107 Atl. 691 (1919). The function of the courts is merely to make sure that just cause for dismissal exists, both factually and legally, and that the municipal officials have not abused their discretion in imposing the punishment in question. It is not our function to decide what we would have done under the circumstances if we had been Baker's superiors."

In passing it may be well to observe the language of our Appellate Courts in the unemployment compensation cases to wit—"A disregard of standards of behavior which the employer has the right to expect from his employees may constitute willful misconduct; a deliberate violation of the rules may constitute willful misconduct; a violation of a statute which causes the specific type of injury which the statute was designed to prevent may constitute willful misconduct; it was not necessary to have an employer's rule where the Act itself is contrary to the laws." McCullough, etc., 178 A. 2d 813, 197 Pa. Sup. 389, allocatur refused.

In view of the fact that the patrolman has been returned to his position—after his defeat in the November elections of 1967—this record constrains us only to make and we do make the following Order:

ORDER.

Now, to wit, this 5th day of March, 1968, the appeal is denied; exception noted to the Appellant and bill sealed (SEAL).

S/ LENCHER, *P. J.*

APPENDIX B

In Re: APPEAL OF JOSEPH E. STANEK
Police Officer, Bureau of Police
Department of Public Safety, City of Pittsburgh

Pursuant to Section VIII of the Police Civil Service Act a Hearing was held at 10:00 A. M., Thursday, August 24, 1967 by the Civil Service Commission to consider "additional evidence" in the Appeal of Joseph E. Stanek, Police Officer, from the decision of a Police Trial Court which suspended him from his position and duties as a Police Officer of the City of Pittsburgh for violation of Ordinance 128 approved March 25, 1950.

The decision of the Police Trial Board, dated July 11, 1967, included the following penalty:

> "The punishment set forth by this Board is a six months suspension from this date. However, if at any time, he ceases to be a candidate for public office, at any time during this suspension, he is to be reinstated to his position in the Bureau of Police, Pittsburgh, Pennsylvania, immediately."

Attorney Arthur Gatz, Jr. represented the Appellant, Joseph Stanek, and Robert Dauer appeared for the Department of Public Safety of the City of Pittsburgh. Attorney Marion Finkelhor served as Legal Advisor to the Civil Service Commission.

FINDINGS OF FACT

1. Ordinance 128 approved March 25, 1950 provides that Police and other designated employees of the Department of Public Safety of the City of Pittsburgh, including Patrolmen, (now Police Officers), "shall not hold or be a candidate for any political or public office."

2. On March 7, 1967, Joseph E. Stanek, Police Officer, City of Pittsburgh filed his intention to seek nomination on the Republican ticket for the Office of Councilman, City of Pittsburgh at the May 1967 Primary Election.

3. On March 13, 1967, Police Supt. James W. Slusser directed a letter to Police Office Stanek advising him of the provisions of City Ordinance No. 128. (Cited above.)

4. Police Officer Stanek continued his candidacy after receipt of Supt. Slusser's notification, and won the Republican nomination for City Council at the May 16, 1967 Primary Election.

5. At the present time Police Officer Stanek is one of the official Republican candidates for Council of the City of Pittsburgh, and is campaigning for the general election to be held in November, 1967.

6. Pursuant to the Police Civil Service Act on March 21, 1967, the Department of Public Safety filed charges against Officer Stanek and Public Safety Director David Craig convened a Trial Court for March 31, 1967 to consider these charges.

7. On March 31, 1967, under the Declaratory Judgment Act, of June 18, 1923 P. L. 840, as amended, Officer Stanek petitioned the County Court to determine the constitutionality and validity of Ordinance 128, and his right to continue employment as a Police Officer while a candidate for Council.

8. On March 31, 1967, the original date of the Trial Board Hearing, Officer Stanek and his Counsel, Attorney Gatz, appeared for the Trial Board proceedings which were then postponed pending the decision of the County Court on Officer Stanek's petition for a Declaratory Judgment.

9. On April 20, 1967, Judge Joseph Ridge, of the County Court, dismissed Officer Stanek's petition for a Declaratory Judgment pending the exhaustion of statutory procedures under the Police Civil Service Act of 1951, as amended.

10. On July 11, 1967, the Police Board was reconvened and conducted a hearing on the following Specification of Charges:

Count 1. Said Joseph E. Stanek knowingly violated Ordinance No. 128 of the City of Pittsburgh, approved March 25, 1950, by becoming an official candidate for public office- - - City Council - - - by filing a Petition for such candidacy and remaining a candidate as of Wednesday, March 15, the day after the last day for withdrawal of candidacy. That Ordinance provides that members of the Bureau of Police "shall not hold any political or public office in addition to their positions in the Department of Public Safety of the City of Pittsburgh . . ." Section IV of the same Ordinance provides violation of any of the provisions of this Ordinance shall constitute grounds for dismissal."

Count 2. Said Joseph E. Stanek knowingly violated the oath of a member of the Bureau of Police "to support . . . the laws and ordinances of the City of Pittsburgh" in that he knowingly and wilfully violated Ordinance No. 128 of the City of Pittsburgh, approved March 25, 1950, on the basis of his declared personal disagreement with the provisions of the Ordinance.

11. The records of the Election Bureau were placed in the record of the Trial Court Hearing, and all parties

agree that Mr. Stanek is, and continues to be a candidate for Council of the City of Pittsburgh.

12. The parties have stipulated that Officer Stanek has a good record as a Police Officer, with no previous history of suspension or disciplinary action.

13. A dispute arose at the Trial Board Hearing on the question of the postponement of the original hearing date pending the Court's decision, and the responsibility for this postponement.

14. David Craig, Director of Public Safety, was present at the Hearing, and offered both voluntary observations and sworn testimony, concerning the role of Supt. Slusser in the postponement of these proceedings.

15. The Police Trial Board on July 11, 1967 found Officer Stanek Guilty as charged and imposed a penalty of six months suspension subject to reinstatement if at any time he ceases to be a candidate for public office.

16. On August 7, 1967, the Trial Board Decision was approved by Mayor Joseph M. Barr.

17. On August 7, 1967, Officer Stanek through his Attorney filed a Petition of Appeal to the Civil Service Commission, and alleged as follows:

1. Petitioner's rights were prejudiced by the highly emotional and bellicose outburst of Safety Director David W. Craig during the course of the Trial Board hearing. Since Director Craig heads the Department of Public Safety to which the Trial Board members belong his conduct amounted to intimidation and precluded the rendering of a fair and just decision by the said Trial Board.

2. The Ordinance which Petitioner was found to have violated is unconstitutional, since it infringes upon Petitioner's rights as a citizen.

3. The Ordinance which Petitioner was found to have violated is unlawful since it is an attempt by a municipality to legislate in an area preempted by the state.

4. Petitioner violated no constitutional or lawful ordinance of the City of Pittsburgh and, therefore, was not guilty of the charges as found in the Specification as filed.

18. On August 24, 1967, the Civil Service Commission held a public hearing on the Appeal of Joseph Stanek, and all parties were afforded the opportunity of presenting additional testimony pertinent to the matters under consideration by the Commissioner.

19. The additional testimony presented to the Civil Service Commission centered upon the effect of the appearance, actions, voluntary verbal observations and sworn testimony of Public Safety Director Craig on the Trial Court's deliberations.

OPINION

After thoroughly reviewing the complete record of the Police Trial Court, the additional testimony presented to this Commission, the formal arguments advanced by Counsel for both parties, and the questions raised by the Petition of Appeal, we are of the opinion that Police Officer Stanek did knowingly violate the provisions of Ordinance No. 128, approved March 25, 1950 which prohibits a Police Officer from becoming a candidate for public office. Officer Stanek at no time disputed this fact but

argued through counsel on the constitutionality and legality of the Ordinance, and the effect of the appearance of Public Safety Director Craig at the Trial Court Hearing.

1. The question of the constitutionality of Ordinance No. 128 is a fundamental question of law. The Civil Service Commission, being an administrative body, is not clothed with the power or authority to pass on constitutional issues. Final determination of such questions must rest with the Courts. Since to our knowledge, this issue has not been determined by a Court of Law, we must conclude that Ordinance No. 128, which was properly enacted and never repealed, is valid and continues in effect.

2. On the question of the enactment of Ordinance No. 128 as a proper exercise of the legislative power of the City of Pittsburgh, we believe that a municipality may enact such Ordinances as it deems necessary and proper for the regulation of employees, including conditions of employment unless such action is in direct conflict with State Legislation. It is our opinion that the provisions of Ordinance No. 128, which forbid a Police Officer from holding public office, or engaging as a candidate for public office, is not within the meaning of the word "political" as used in the Police Civil Service Act of 1951, as amended, which precludes the imposition of penalties for any religious or political causes, *Duffy v. Cooke,* 239 Pa. 427 (1913). We are aware of no decision by a Pennsylvania Court which controverts this position. Hence, we must conclude that this Ordinance does not conflict with the State Legislation and is therefore valid and in effect.

3. On the issue of Public Safety Director Craig's interruption of the Police Trial Court proceedings and his subsequent testimony, we are of the opinion that the Members of the Court were in no wise influenced in arriving at

their decision. There is no question that the duties of the Public Safety Director requires that he participate in the selection of the Trial Court and swearing in the selected officers. Nor does the Civil Service Act or the Regulations of the Bureau of Police prohibit his attendance at the Trial Court proceedings. The question centered upon the propriety of his actions at the hearing. On this point, we believe that Public Safety Director Craig's remarks, regardless of the tone or volume of his voice, or his physical actions, were related to the completely irrelevant issue of the veracity of Police Superintendent Slusser and did not involve Officer Stanek nor the Specification of Charges under consideration by the Trial Court.

4. Ordinance No. 128 provides the penalty for violation as "Grounds for Dismissal." The Commission believes the wording of the penalty does not make dismissal mandatory for violation. The Police Act of 1951 specifies the Police Trial Court as the body to decide the guilt or innocence of accused Police Officers, and to impose such penalties as they deem fitting. We feel therefore, the penalty imposed is permissible.

DECISION

The Civil Service Commission after careful review of this Appeal, is of the opinion that Ordinance No. 128 is a valid and legal Ordinance; that the Appellant was afforded a fair and impartial trial; the appearance and testimony of Public Safety Director Craig did not influence the Trial Court; that the Police Trial Court had sufficient evidence to sustain its verdict; and that the penalty imposed was both temperate and adequate.

ORDER

And now, to wit, this 12th day of September, 1967, the decision of the Police Trial Court is affirmed and the Appeal of Joseph E. Stanek is dismissed.

CIVIL SERVICE COMMISSION

MARION K. McKAY
President

ALBERT STATTI
Commissioner

JAMES B. CAYCE
Commissioner

ATTEST:
C. D. MARTRANO
Secretary

APPENDIX C

IN THE
COUNTY COURT OF ALLEGHENY COUNTY,
PENNSYLVANIA

JOSEPH E. STANEK,

Petitioner,

vs.

DAVID A. CRAIG, Director of Public Safety, City of Pittsburgh; JOSEPH M. BARR, Mayor of the City of Pittsburgh; JAMES W. SLUSSER, Superintendent of Police, City of Pittsburgh; CITY OF PITTSBURGH, a Municipal Corporation; and, WILLIAM C. SENNETT, Attorney General, Commonwealth of Pennsylvania,

Respondents.

No. 962 of 1967.

OPINION AND ORDER

Ridge, *J.*

On March 31, 1967, Joseph E. Stanek filed a Petition for Declaratory Judgment pursuant to the provisions of the Uniform Declaratory Judgments Act of June 18, 1923, P. L. 840, as amended and supplemented, 12 P. S. §831-853, asking that the Court declare invalid Ordinance No. 128 of the City of Pittsburgh (a copy of which is designated as Exhibit B of the Petition), which forbids certain designated employees of the Bureau of Police, Department of Public Safety, of the City of Pittsburgh, from holding, or becoming candidates for any "political or public office."

The Petitioner, Joseph E. Stanek, is a patrolman* in the Bureau of Police of the City of Pittsburgh. On March 7, 1967, Petitioner filed as a candidate for the office of Councilman of the City of Pittsburgh.

On March 21, 1967, Specification of Charges was filed with the Director of the Department of Public Safety, charging Petitioner with violating Ordinance No. 128 of 1950 and the oath which he took upon becoming a member of the Bureau of Police. On the same day, the Director ordered that a hearing be held on the charges on March 31, 1967. A copy of the Specification of Charges was served upon the Petitioner on March 22, 1967.

To the Petition for Declaratory Judgment filed by Joseph E. Stanek, the City and the defendant City officers filed an "Answer Raising Preliminary Questions of Law." After argument and submission of briefs, the matter is now before us for determination of the preliminary questions of law raised by the defendants' Answer.

DISCUSSION

Section 5 of the Act of May 22, 1935, P. L. 228, § 5, 12 P. S. § 581, supplementing the Uniform Declaratory Judgment Act of June 18, 1923, P. L. 840, as amended, 12 P. S. §§ 831-853, allows the defendant in a declaratory judgment proceeding, before pleading to the factual averments of the petition, to raise any legal questions relating to the jurisdiction of the Court or to the petitioner's legal right to have the disputed matter determined in this character of proceeding. The precise language is as follows:

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* According to Defendants, the correct designation is now "police officer."

> "A defendant may by his answer, without first replying to the averments of fact in the petition, raise any question of law which goes either to the jurisdiction of the court or to petitioner's legal right to have the disputed matter determined in this character of proceeding, and any such question of law may be set down for hearing and disposed of *in limine*. If in the opinion of the court, the decision of the question, thus set for hearing, requires the determination against the petitioner of the point or points there raised, the court may make such order thereon, as the situation demands. If the court shall decide such points so raised against a defendant, he may, within fifteen days, file an answer to the averments of fact in the petition, and the case shall be set down for a hearing on the merits of the controversy."

The defendants' Answer, which is, in effect, a preliminary objection raising questions of law, admits for the purpose of disposing of said preliminary objections, the truth of all well-pleaded averments of fact in the petition.

Initially, the Court is asked to rule on whether the Petitioner has the "legal right" to have the disputed matter determined in this character of proceeding.

As a general rule, whether jurisdiction will be taken of any particular case for purposes of granting a declaratory judgment is a matter of judicial discretion. However, the discretion involved is a limited one, and a court may not refuse to assume jurisdiction if the case is properly before the court and meets the requirements of the Uniform Declaratory Judgments Act. *P. L. E. Declaratory Judgment* § *1*. However, the right to obtain a declaratory judgment is made subject to the specific provision contained in paragraph 6 of the Act which reads in pertinent part, as follows:

> "Where, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy must be followed."

The Supreme Court, in *Lakeland Joint School District Authority vs. Scott Township School District,* 414 Pa. 451 (1964), proclaimed:

> "This Court now adheres to the view that declaratory judgment proceedings must not be entertained if there exists another available and appropriate remedy, whether statutory or not." (citing cases) (p. 455.)

The rule that a declaratory judgment proceeding will not be entertained "where another statutory remedy has been especially provided for the character of case in hand" has been followed since the ruling in *Kariher's Petition (No. 1),* 284 Pa. 455, 471 in 1925.

This rule has been applied to bar the use of declaratory judgment proceedings in a variety of matters such as those involving zoning *(Castle Shannon Coal Corp. v. Upper St. Clair Twp.,* 370 Pa. 211 (1952)), workmen's compensation *(American Casualty Co. v. Kligerman,* 365 Pa. 168 (1950)) and arbitration under the Arbitration Act of April 24, 1927, P. L. 381 *(Stofflet & Tillotson v. Chester Housing Authority,* 346 Pa. 574 (1943)). In these and various other cases cited in the interesting commentary by Professor Levin commencing at page XV of Volume 12 of *Purdon's Statutes,* the courts have held statutory patterns of procedure to be exclusive remedies. It must be inferred that the rationale of these decisions is that the benefits accruing from requiring uniformity of procedure and adherence to well-established statutory patterns of appeal are likely to outweigh the benefits resulting from the use of declaratory judgment proceedings.

The question then is whether in the instant case there exists another available and appropriate remedy to settle the controversy between the parties precipitated by the Petitioner's filing for public office and the defendants' response thereto.

In Sections 7 and 8 of the Act of August 10, 1951, P. L. 1189, as amended, 53 P. S. 23537, the General Assembly has acted to regulate the removal, discharge or suspension of any employee in the competitive class of the Bureau of Police.

Section 7 provides that no such employee "shall be removed, discharged or suspended for a period exceeding ten days as a penalty, or reduced in rank or pay without his written consent, except for just cause, which shall not be religious or political; nor, in any event, except by decision of a court, either of trial or of inquiry, duly determined and certified in writing to the Mayor and approved in writing by the Mayor." Section 7 further details the procedure to be followed, prescribes the manner of determining the composition of the board, its powers and other related matters.

Section 8 of the Act, 53 P. S. 23538, provides, *inter alia*, that the accused employee shall have the right to appeal to the Civil Service Commission from a decision adverse to him, and thereafter to this Court.

It is our judgment that the two cited paragraphs set forth with reasonable detail a harmonious statutory method for judging the legal justification of any attempted removal, discharge or suspension (for a period exceeding ten days of any employee in the competitive class in the Bureau of Police.

A detailed procedure so carefully provided by the Legislature for fairly dealing with City employees of a most important and most sensitive department should not lightly be set aside. The existing provisions represent the result of much give and take on the legislative front and presumably secure, as best as is presently possible, the respective interests of both employer and employee. The existence of a legislative pattern, so carefully drawn and, perhaps, painfully produced would seem to emphasize the wisdom implicit in that provision in the Uniform Declaratory Judgment Act which forbids resort to a declaratory judgment proceeding where a statutory remedy exists.

Petitioner's counsel, in urging approval of declaratory judgment proceedings, has argued both orally and in his brief that the matters raised by his petition "relate solely to questions of law primarily concerning the validity of Ordinance No. 128," and as such are beyond the competence of trial board members. He suggests that neither they nor the members of the Civil Service Commission, the body to which an appeal first lies, are qualified to determine the "complex legal or constitutional questions" presented by the controversy between the parties.

By analogy, this argument would apply with equal force to litigation involving zoning ordinance provisions where statutory procedure calls for initial submission of the matter to a board of adjustment, even if the matter involves constitutional issues which must be resolved ultimately by a reviewing court. (c.t. *Eller v. Board of Adjustment,* 414 Pa. 1, 5 (1964)). Yet, as we have pointed out above, in *Castle Shannon Coal Corp. v. Upper St. Clair Twp.,* the Supreme Court approved the dismissal of a declaratory judgment action to determine the validity of a zoning ordinance on the ground that there existed a specific statutory procedure for testing its validity.

It may be argued, and we think the petitioner's petition implies this, that to require that statutory remedies be followed where available before resort may be had to declaratory judgment proceedings, shows undue deference to form at the expense of substance. This may at times be so but on close examination of the cases, more often than not there appears much wisdom in following established statutory patterns. Following the well-trodden legal path is often most reassuring and most productive. Then, too, judicial restraint in withholding formal intervention until clearly warranted (although sometimes difficult) contains the seeds of its own reward. Often, controversies evaporate, reassessments of positions are made and the need for judicial attention disappears.

This is not to overlook the fact that this case appears to pose an interesting and intriguing legal question, involving, it is suggested, an aspect of constitutional law which is probably deserving of appellate court scrutiny for the mutual benefit of the petitioner and those similarly employed, as well as the defendant city and its officers.

Because of our determination that the Uniform Declaratory Judgment Act and the cases interpreting it give the petitioner no legal right to have the matters raised in his petition determined in a declaratory judgment proceeding, we express no opinion on the constitutional question which the petitioner poses.

In view of the inclination of the Supreme Court, *sua sponte*, to insist on adherence to the requirement of Section 6 of the statute prohibiting a declaratory judgment proceeding (see *Stofflet & Tillotson v. Chester Housing Authority*, 346 Pa. 574 (1943)), our present decision may possibly be reckoned as saving much time and effort in pur-

suing a matter, which, if decided as petitioner requests, might result in the matter being terminated without the main issue being resolved.

We hold, therefore, that Petitioner, whose pleading echoes a refrain from Gilbert and Sullivan's opera "Pirates of Penzance" that "Ah, take one consideration with another, a policeman's lot is not a happy one." is without any legal right under the Uniform Declaratory Judgment Act of June 18, 1923, P. L. 840, as amended and supplemented, to have the issues raised in his petition determined in a declaratory judgment proceeding.

Accordingly, we enter the following

ORDER

AND NOW, April 20, 1967, after argument and submission of briefs and upon careful consideration thereof, and for the reasons stated in the foregoing opinion,

IT IS HEREBY ORDERED:

That the petition of Joseph E. Stanek is dismissed.

BY THE COURT:
RIDGE, *J.*

APPENDIX D

DECISION OF BOARD

We, the Board of July 11th, 1967, composed of Captain John McNamara, Lt. Stanley L. Gorski, and Officer Ralph L. McMillan, find that the defendant, Officer Joseph E. Stanek, by becoming a candidate for public office has violated both counts as specified in the Specification of Charges.

The punishment set forth by this Board is a six months suspension from this date. However, if at any time, he ceases to be a candidate for public office, at any time during this suspension, he is to be reinstated to his position in the Bureau of Police, Pittsburgh, Pennsylvania, immediately.

APPENDIX E

IN THE
SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

No. 3012 Miscellaneous Docket

In Re: APPEAL OF JOSEPH E. STANEK.

Appeal from the Order of March 5, 1967 of the Court of Common Pleas of the County of Allegheny.

No. A1744 of 1967 Term, 19

CERTIFIED FROM THE RECORD

March 29, 1968, Petition of Joseph E. Stanek for leave to appeal under Rule 68½, filed.

ORDER

October 28, 1968
Petition denied.

Per Curiam.

In Testimony Whereof, I have hereunto set my hand and the seal of said Court at Pittsburgh, Pa. this 31st day of December 1968.

HELEN D. STEELE,
Deputy Prothonotary.

(SEAL)

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COUNTER-STATEMENT OF QUESTIONS INVOLVED

Should the Supreme Court of the United States allow an appeal in a case in which the issues involved have been previously decided adversely to the Petitioner by this Honorable Court and by the Supreme Court of Pennsylvania:

a. That a restriction against the candidacy by employees of the Bureau of Police for public or party offices does not violate the Fourteenth Amendment to the Constitution of the United States or Article III, Section 32 (formerly Article III, Section 7), of the Constitution of Pennsylvania and is a lawful exercise of the power of municipalities to establish standards of conduct for municipal employees?

b. That such a restriction limited to candidacy for public or party office does not violate the public employee's right of free political association under the First Amendment to the Constitution of the United States?

COUNTER-STATEMENT OF FACTS

Joseph E. Stanek, a former police officer in the Bureau of Police of the City of Pittsburgh, has petitioned this Honorable Court for a Writ of Certiorari under 28 U.S.C., Section 1257(3), to the Common Pleas Court of Allegheny County, Pennsylvania, Civil Division, formerly the County Court of Allegheny County, Pennsylvania, for the purpose of reviewing the Order and Opinion of that court entered at No. A. 1744 of 1967.

This opinion was rendered on appeal under the Policemen's Civil Service Act for Cities of the Second Class, Act of August 10, 1951, P. L. 1189, Section 7, as amended, 53 P.S. 23537, from a decision of the Civil Service Commission of the City of Pittsburgh upholding the action of a Police Trial Court of the Bureau of Police of the City of Pittsburgh.

Joseph E. Stanek petitioned the Supreme Court of Pennsylvania for a Writ of Certiorari at No. 3012 Miscellaneous Docket to review this decision and an Order denying the Petitioner's request was entered on October 28, 1968.

Petitioner, Joseph E. Stanek, was a police officer in the Bureau of Police in the City of Pittsburgh from January 14, 1943 until he resigned on May 20, 1968. On March 7, 1967, Stanek filed petitions for nomination as a candidate for the office of Councilman of the City of Pittsburgh after having been advised by the Superintendent of Police, James W. Slusser, in a letter dated March

13, 1967, that to do so would be in violation of his oath of office as a police officer and in violation of City of Pittsburgh Ordinance No. 128, approved March 25, 1950. (The full text of this ordinance is set forth on page 3 of Mr. Stanek's petition.) Section 1 of this Ordinance provides as follows:

> "The following employees in the Department of Public Safety shall not hold any political or public office or be a candidate for political or public office in addition to their positions in the Department of Public Safety of the City of Pittsburgh, except as hereinafter provided:
>
> Superintendent of Police
> Assistant Superintendent
> Inspector of Traffic
> Inspectors of Police
> Lieutenant of River Patrol
> Lieutenants of Traffic
> Lieutenants
> Sergeants
> Turnkeys
> Patrolmen
> Special Officers
> Investigator Assigned to Criminal Court
> Inspector of Detectives
> Police Investigator of Child Delinquency
> Captain of Detectives
> Lieutenants of Detectives
> Detectives

President Detectives
Captain of Mounted Police
Woman Police Captain
Woman Police Lieutenant
Women Police."

On March 21, 1967, Specifications of Charges were filed with the Director of the Department of Public Safety of the City of Pittsburgh charging Petitioner with having violated both Ordinance No. 128, approved March 25, 1950, and the oath which he took upon becoming a member of the Bureau of Police. On the same day, the Director ordered that a Police Trial Court, as set forth in the Policemen's Civil Service Act, hold a hearing on the charges. Petitioner was served, on March 22, 1967, with a copy of the Specifications of Charges and notice of the hearing.

On March 30, 1967, the day of the scheduled Police Trial Court hearing, the City of Pittsburgh and Safety Director David Craig were served with a Petition for Declaratory Judgment, under the Pennsylvania Declaratory Judgment Act of June 18, 1923, P. L. 840, as amended, 12 P.S. 831-843, filed in the County Court of Allegheny County, seeking to test the constitutionality of Ordinance No. 128, approved March 25, 1950. Thereupon, the Police Trial Court was postponed until the County Court could act upon the declaratory judgment action.

On April 20, 1967, the Honorable Joseph H. Ridge handed down an Opinion and Order holding that Police Officer Stanek had no legal right to have the issue of the constitutionality of the Ordinance determined in a declaratory judgment proceeding: *Stanek v. Craig*, No. 962 of

1967, County Court of Allegheny County, set forth on page 42 of Mr. Stanek's petition as Appendix C.

During the time interval between the date originally set for the Police Trial Court and the date on which Judge Ridge rendered his decision, Police Officer Stanek became ill and was hospitalized. The hearing was, therefore, delayed until July 11, 1967.

At the Police Trial Court hearing the records of the Department of Elections of Allegheny County concerning the Petitioner's candidacy were placed in evidence. It was stipulated that Petitioner was and continued to be, at that time, a candidate for the office of Councilman of the City of Pittsburgh.

The Police Trial Court found Police Officer Stanek guilty as charged, and proposed the following penalty to the Director of Public Safety:

> "The punishment set forth by this Board is a six month suspension from this date. However, if at any time, he ceases to be a candidate for public office, at any time during this suspension, he is to be reinstated to his position in the Bureau of Police, Pittsburgh, Pennsylvania, immediately."

On August 7, 1967, the Police Trial Court decision was approved by Mayor Joseph M. Barr of the City of Pittsburgh and thereupon became final. On the same date Police Officer Stanek, through his attorneys, filed a Petition of Appeal with the Civil Service Commission of the City of Pittsburgh, pursuant to Section 8 of the Policemen's Civil Service Act, Act of August 10, 1951, P. L. 1189, 53 P.S. 23338. A hearing was held by the Commis-

sion on August 24, 1967, at which all parties were afforded the opportunity to present additional testimony.

On September 12, 1967, the Civil Service Commission, after reviewing the record before the Police Trial Court and the additional evidence presented at the August 24, 1967 Civil Service hearing, affirmed the decision of the Trial Court and dismissed the appeal.

Mr. Stanek then appealed to the then County Court of Allegheny County which denied the appeal from the Pittsburgh Civil Service Commission.

CONTENTIONS OF RESPONDENT

I.

That a Restriction Against the Candidacy by Employees of the Bureau of Police for Public or Party Offices Does Not Violate the Fourteenth Amendment to the Constitution of the United States or Article III, Section 32 (Formerly Article III, Section 7) of the Constitution of Pennsylvania and Is a Lawful Exercise of the Power of Municipalities To Establish Standards of Conduct for Municipal Employees

Petitioner argues that Ordinance No. 128 of 1950 is unconstitutional because it violates the equal protection clause of the Fourteenth Amendment of the United States Constitution. Petitioner's basis for this assertion is that the ordinance applies only to policemen and not to other civilian employees in the Department of Public Safety and that police job titles not listed in Ordinance No. 128 are not subject to Ordinance No. 128 of 1950.

This issue has in effect already been decided in Pennsylvania. In *Baxter v. City of Philadelphia*, 426 Pa. 240, 253, 231 A. 2d 151, 159 (1967), a case involving differentiation in the payment of overtime to policemen as opposed to other municipal (civilian) employees, this Court stated:

> ". . . [W]e are convinced that the peculiar sensitivity of the public interests protected by police . . . justify such differences as existed between treatment

by the city of its police and other employees.* *Indeed, we should be very reluctant to invalidate any measures through which government varies the wages and working conditions of public employees according to the functions they perform.*" (Emphasis added.)

It is also to be noted that many Pennsylvania statutes treat policemen differently from other municipal employees, e.g., Act of August 10, 1951, P. L. 1189, as amended, 53 P.S. 23531-23540 (Policemen's Civil Service; Act of May 22, 1935, P. L. 233, as amended, 53 P.S. 23644-23666 (Policemen's Relief and Pension Fund); Act of June 28, 1935, P. L. 479, as amended, 53 P.S. 637 (compensation for injuries); Act of March 7, 1901, P. L. 20, Art. III, Section 1, as amended, 53 P.S. 22532 (qualifications for employment and working conditions of policemen); Act 111 of 1968, P.S. (Police and Fire Arbitration Act). The constitutionality of these classifications has never been questioned.

Petitioner further argues that Ordinance No. 128, approved March 25, 1950, is unconstitutional because it prohibits only certain employees of the Bureau of Police from running for or holding political office, and that some positions within the said bureau are not covered by terms of this ordinance. Petitioner bases this contention on the fact that the 1950 ordinance does not name all employees of the Bureau of Police whose job titles as set forth in the salary ordinances ** for each year from 1951 to 1967

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* Footnote omitted.

** Under its Charter Act, the City of Pittsburgh is required to adopt a salary ordinance for each fiscal (calendar) year, the ordinance being enacted in the month of December of the prior year. The salary ordinance lists all of the positions for City employees for the year and the salary or wage for each position.

differ somewhat from the job titles listed in the 1950 ordinance as specifically prohibited from candidacy for or holding of a public office.

A reading of the salary ordinance for the calendar year for *1950* (Ordinance No. 621, approved December 24, 1949, the pertinent part of which is hereto attached and marked Exhibit "A"), will show that Ordinance No. 128 of 1950 applied to *all* sworn police officers of the City of Pittsburgh, that is, to all members of the Bureau of Police who had completed Police Academy training and had taken the prescribed oath as a police officer. In other words those employees whose particular duties with the Bureau of Police would permit them to exert undue or improper influence on the electorate.

Since the passage of Ordinance No. 128, the salary ordinances for the various years between 1951 and 1967 have listed more descriptive job titles for some of the positions in the Bureau of Police, e.g., Captain of Traffic or Police Firearms Instructor. However, these titles are descriptive only and do not create separate salary classifications not covered by Ordinance No. 128 of 1950.

Moreover, as a matter of law, the City is limited in the positions it may create in the Bureau of Police by the Act of March 25, 1929, P. L. 67, 53 P.S. 23402, to the following grade and salary classifications:

Patrolmen
Police Operators
Detectives
Sergeants
Lieutenants

Captains
Inspectors
Assistant Superintendents
Superintendents

The Supreme Court of Pennsylvania held in *Commonwealth ex rel. Malone v. Crummer*, 375 Pa. 222, 100 A. 2d 90 (1953), a case which dealt with the creation of a descriptive job title of "traffic sergeant", that the addition of this position was simply a *specialized title* for sergeant and therefore was within the classification limitations of the 1929 statute.

It is respectfully submitted, particularly in light of the *Crummer* case, that the addition of other descriptive titles in the salary ordinances of the City of Pittsburgh does not add any new categories of police officers other than those permitted by the 1929 Act.

When Council passed Ordinance No. 128 of 1950, it was their obvious intention to encompass *all* inspectors, *all* captains, *all* lieutenants, and *all* patrolmen, even though different specialized titles might be used from time to time in the salary ordinances for administrative clarity. The ordinance has been administered over the years to include all of these categories. Therefore, the argument of petitioner is *factually incorrect* and there is no discrimination, in the 1950 Ordinance between different positions of police officers in the Bureau of Police.

Cases cited by petitioner to support the argument that Ordinance No. 128 is discriminatory and therefore unconstitutional are neither relevant nor appropriate. Petitioner's attempt to exempt certain descriptive police titles from the scope of 128 is directly contrary to the adminis-

trative practices of the Bureau of Police for the last eighteen years and is factually incorrect. Therefore any allegation of discrimination must be based on the classification of policemen as a separate class from other municipal employees. Under this argument the Police Civil Service Act, the Police Pension Act and other special benefits received by police officers both by City Ordinance and Pennsylvania statutes would also be unconstitutional.

Reynolds v. Sims, 377 U.S. 533 (1964), involved the reapportionment of Alabama legislative districts. *Weeks v. Childrens Hospital of Philadelphia,* 200 F. Supp. 77 (E.D. Pa. 1961), provided that classification must not be arbitrary or capricious; *Loving v. Virginia,* 388 U.S. 1 (1967), held that the miscegnation statutes of Virginia were discriminatory on the basis of racial classification; and *Morris v. Crumlish,* 239 F. Supp. 488 (E.D. Pa. 1965), involved the classification of those persons incarcerated in jail as opposed to persons free on bail—all cases inapplicable to a classification between police officers and other municipal employees—the *only* classification involved in the instant proceedings.

II.

That Such a Restriction Limited to Candidacy for Public or Party Office Does Not Violate the Public Employee's Right of Free Political Association Under the First Amendment to the Constitution of the United States

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Petitioner contends that Ordinance No. 128 of 1950 is unconstitutional in that it restricts the right of free political association and therefore violates the First Amendment freedoms of the petitioner.

While the right of free political association must be closely guarded, there are certain activities which are inconsistent with and in fact detrimental to the political rights of others. Where the duties of a particular position could influence or provide the opportunity for duress upon the electorate, political activities of persons holding these positions have been limited by municipal ordinances, home rule charter, state law and federal regulation.

A police officer is the guardian of the political rights of the electorate. He guards the polls, he is responsible for order at political rallies; he protects the street parade and he is at all times responsible for the peace and good order of the community on a non-partisan and non-political basis.

The very act of becoming a candidate for party office (committeeman, ward chairman, etc.) or political office is to attempt to win the favor of the electorate, to influence their vote, and in some instances to promise favors if elected. The two roles are in absolute conflict and could

breed evils of duress and disparate treatment and could endanger the integrity of the entire Bureau.

As early as 1913 the Pennsylvania Supreme Court upheld the constitutionality of legislation restricting the political activity of municipal employees.

In *Duffy v. Cooke,* 239 Pa. 427, 86 Atl. 1076 (1913), the Pennsylvania Supreme Court upheld the constitutionality of the "Shern Law," Act of February 15, 1906, P. L. 19 (repealed). Section 2 of this Act, applicable to cities of the first class, required the discharge of any employee who served as a member of, or attended a meeting of, any committee of any political party, or took an active part in political management or in political campaigns, or used his office to influence political movements or to influence the political action of any other employee, or who engaged in other activities of a political nature.

In *Duffy,* Pennsylvania Supreme Court approved the trial court's refusal to grant mandamus by which the plaintiff had sought reinstatement as general foreman in the Department of Public Works of the City of Philadelphia following his discharge pursuant to Section 2 of the Shern Law. The opinion of the lower court, affirmed per curiam, said:

> "An employer, whether an individual or a municipality, is entitled to have the best service of which an employee is capable. And if, in the judgment of the legislature, political activity on the part of clerks or employees of a city is likely to interfere with efficient public service, there would appear to be no legal reason why such activity should not be restrained or prohibited, so long as the individual elects to continue

in the public service. If such restriction is distasteful to him, he has the alternative of seeking other employment. He is not, by the act, prohibited from engaging in free speech, or otherwise communicating or expressing his personal views upon political subjects, urging these views upon others in an effort to influence them to vote for the candidates of his choice, nor is his right to the free exercise of the elective franchise in any manner restricted." 239 Pa. at 441.

It is important to note that the Shern Law contained far greater restrictions than does Ordinance No. 128 of 1950. The statute prohibited employees from making almost any statements of a political nature. The Pittsburgh ordinance does not restrict petitioner's freedom to express himself on any political subject, nor does it restrict his participation in any political activity, other than as a candidate for, or holder of, political or party office.

In *McCrory v. Philadelphia,* 345 Pa. 154, 27 A. 2d 55 (1942), the Pennsylvania Supreme Court, following *Duffy v. Cooke,* upheld a similar provision in the Philadelphia Charter Act of 1919.

The United States Supreme Court has upheld the power of Congress to prohibit political activity by public employees. *United Public Workers v. Mitchell,* 330 U.S. 75 (1947); *Oklahoma v. U.S. Civil Service Commission,* 330 U.S. 127 (1947).

The prohibitions applicable to government employees, under the Hatch Act, 54 Stat. 767, 18 U.S.C. 61h, encompass a far broader range of political activities than does Ordinance No. 128 of 1950. Whereas the ordinance prohibits only the candidacy for, or holding of, public or poli-

tical office, the Hatch Act prohibits the taking of "any part in political management or in political campaigns".

It is respectfully submitted, therefore, that the issue of whether prohibitions against government employees engaging in political activity violates First Amendment guarantees has already been decided by the United States Supreme Court and such prohibitions have been upheld.

At the present time there are prohibitions against candidacy for public office by municipal officers and employees in the Philadelphia Home Rule Charter and against political activity by policemen and paid firemen in boroughs and townships of the first class.

The Philadelphia Home Rule Charter provides in Section 10-108(5):

> "No officer or employee of the city, except elected officers running for re-election, shall be a candidate for a nomination or election to any public office unless he should have first resigned from his then office or employment."

The recently adopted Borough Code, Act of February 1, 1966, P. L. (1965) 1656, Act No. 581, Section 1190, 53 P.S. 46190, provides, inter alia:

> "No person employed in any police or fire force of any borough would be suspended, removed or reduced in rank except for the following reasons: . . . (6) Engaging or participating in conducting of any political or election campaign other than to exercise his own right of suffrage."

The same restriction is contained in the First Class Township Code of June 24, 1931, P. L. 1206, as amended, 53 P.S. 55645.

While the constitutionality of the cited provision of the Philadelphia Home Rule Charter was not in issue in either case, its validity appeared to be assumed by this Court in *Commonwealth ex rel. Specter v. Martin*, 426 Pa. 102, 232 A. 2d 730 (1967), and in *Chalfin v. Specter*, 426 Pa. 464, 233 A. 2d 862 (1967), cases involving the prohibition against an elected officer running for a different elective office without resigning his present position.

Petitioner claims further that Ordinance No. 128, approved March 25, 1950, is unconstitutional because it is overboard in its restriction and cites several cases from other jurisdictions in support of this allegation. These cases are readily distinguishable.

In *Post v. Civil Service Commission of County of Alameda*, 37 Cal. Rptr. 625, 392 P. 2d 385 (1964), the Supreme Court of California had before it the provisions of a county charter prohibiting *any* person holding *any* position in the classified civil service from asking, soliciting or receiving political contributions and from taking any active part in a political management or affairs in any political campaign or election, other than to cast his vote or privately to express his opinion. The Court held that the statute violated federal and state guarantees of freedom of speech because of its overly broad and vague prohibitions. The California Court affirmed the order to reinstate the plaintiff, who had been dismissed as director of a county medical facility because of his service as chairman of a speakers' bureau for a committee seeking the re-election of a governor.

The California Court said that the restrictions on speech contained in the act applied to all forms of public expression on public affairs and to all levels and types of

election, including referenda which could affect the employee's working conditions. On this basis, the opinion in *Fort* distinguished *United Public Workers v. Mitchell* (supra), which had upheld the Hatch Act:

> "The [Hatch] act was aimed only at active participation in partisan politics and did not restrict public expressions on public affairs and personalities so long as the activity did not involve an 'objective of party action' and was not directed toward 'party success.'" 332 P. 2d at 388.

The restrictions of Ordinance No. 128 of 1950, unlike the restrictions of the Alameda County charter are directed only to limited and specific forms of political action. The Ordinance makes no effort to prevent police officers of the City from participating in public affairs, campaigning on non partisan issues or from supporting publicly any political candidate or political position.

Kinnear v. City and County of San Francisco, 38 Cal. Rptr. 631, 392 P. 2d 390 (1964), involved the dismissal of a deputy sheriff, the holder of a permanent civil service position, as a result of his filing for election for the office of sheriff. The applicable provision of the San Francisco charter stated:

> "*Any* appointive officer or employee of the city and county who shall become a candidate for election by the people to any public office shall automatically forfeit such city and county office." (Emphasis added.)

This provision also was held to be unconstitutional for overbreadth and the plaintiff was ordered reinstated with back pay.

The San Francisco charter applied to all employees and prohibited candidacy for all offices, whether elected on a partisan or non-partisan basis. The provision was overbroad in this regard because, the Court said:

> "San Francisco has not, as it must in order to prevail, shown a compelling need to restrict the fundamental right involved on such a sweeping scale." 392 P. 2d at 392.

Ordinance No. 128 of 1950, although prohibiting candidacy for all public and party offices, limits its prohibition to police officers. The need for such a restriction as applied to positions of particular sensitivity, policemen, is discussed below. Unlike the San Francisco Charter, political candidacy does not necessarily work a forfeiture of office under Pittsburgh Ordinance No. 128 of 1950, as is demonstrated by the decision of the Police Trial Court which suspended the petitioner until after the election in the instant case.

The plaintiff in *Minielly v. State of Oregon*, 242 Ore. 490, 411 P. 2d 69 (1966), like the plaintiff in the *Kinnear* decision was a deputy sheriff, subject to civil service, who had become a candidate for election to the office of sheriff. Plaintiff sought an injunction against the enforcement of an Oregon statute which provided for forfeiture of employment by *any* civil service employee who became a candidate for election to any public office without resigning.

In affirming the trial court's grant of the injunction, the Oregon Supreme Court reviewed numerous state and federal decisions discussing the privileged position of freedom of speech and concluded that, absent a showing

of compelling state interest in restricting political candidacy of its employees, the prohibition must fall. The Court said:

> "The conclusion to be drawn from the above cases would appear to be that while a person does not have a constitutional right to be employed by the public, the government is not free to place unconstitutional prerequisites upon the securing of public employment nor does it have the right to ignore the constitution if it desires to terminate such employment. *The cases would also indicate that the government has the authority, without violating the constitution to make and enforce regulations for public employment which bear a reasonable relation to the promotion of efficiency, integrity, and discipline of the public service and which are not arbitrary or discriminatory.* (Emphasis added.)
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> • • • • • • • •
>
> "We hold the statutes unconstitutional because of overbreadth. We believe, however, that there would be a compelling state interest warranting the leglislature to pass more narrowly drawn legislation. The present statute encompasses too broad a scope and would prevent the plaintiff from becoming a candidate for state, federal or nonpartisan office. It cannot be demonstrated that the good of the public service requires all of the prohibitions of the present statute." 411 P. 2d at 73, 78.

The City of Pittsburgh, in the instant case, attempted to introduce into evidence the Presentment of a Grand Jury: *In re Grand Jury Investigation of Law Violations*

in the City of Pittsburgh and County of Allegheny, No. 189 June Sessions, 1948, Miscellaneous Docket, in the Court of Oyer and Terminer and General Jail Delivery and Quarter Sessions of the Peace of Allegheny County, Pennsylvania, which would have demonstrated the compelling public need to restrict political activity of police officers in the manner set forth in Ordinance No. 128 of 1950. Petitioner's objections to this evidence were sustained by the court below.

We submit that this past history would have demonstrated further the proper public need for limited regulation of political activity by members of the Bureau of Police who serve as police officers. Ordinance No. 128 of 1950 was drawn so as to accomplish this limited purpose without unnecessarily restricting a police officer's right to express publicly his views on political or public issues. Even without the rejected evidence, the lower court found that the reasonableness of, and the public need for, a restriction on the political activity of police officers are apparent.

In *Ivancie v. Thorton,* Ore. (86 Adv. 1183), 443 P. 2d 612 (1968), the Oregon Supreme Court in a case involving a provision in the Portland, Oregon, City Charter prohibiting certain municipal officers from seeking other public office distinguishes its own ruling in the *Minielly* case, supra. The Court held that since the provision of the Portland, Oregon, City Charter was not necessarily overbroad in terms of its purpose, and since the requirements of the provision were definite and certain, and since the persons and officers affected were narrowly defined, and since there was such substantial government interest to protect as to justify restriction on

political freedom, the challenged provision of the City Charter was not unconstitutional.

It is to be noted that the Oregon Supreme Court in its opinion (page 616) eluded to the much more restrictive provision of the Philadelphia Home Rule Charter and to the fact that the Philadelphia restriction on municipal employees seeking public office had been twice before the Pennsylvania Courts, including the Pennsylvania Supreme Court, without any suggestion of unconstitutionality, and the court referred to *Mayer v. Hemphill,* 411 Pa. 1, 19 A. 2d 444 (1963), and the cases cited therein.

For the sake of completeness, we want to call to the attention of this Court one of the latest appellate decisions in this area, not cited by the Petitioner. In *Destefano v. Wilson,* 96 N.J. Super. 592, 233 A. 2d 682 (1967), the New Jersey Superior Court struck down a regulation applicable to firemen in the City of Hoboken, prohibiting political activity, including candidacy for political office. Involved in the case was a *fireman* who was a candidate for city councilman.

The Hoboken regulation stated that: "No members shall take an active part in politics or political contests or engage in controversy concerning candidates or issues."

The New Jersey Court again cited the "overbreadth" of the regulation:

> "The 'overbreadth' of Rule 128 is obvious. It is not drawn with that degree of specificity which is required in order to sustain the restraints which it imposes upon the exercise of constitutional rights. Rule 128 effectively deprives plaintiff of his right as a citizen to participate in any phase of political life.

It not only prevents him from running for public office and participating in political campaigns, but it also deprives him of his constitutional right to speak freely on public questions, issues and controversies. This is not consonant with the American tradition of recognizing an individual's right to 'speak out and be heard.'" 233 A. 2d at 688.

In summary, cases cited by petitioner are in the main broad prohibitions aimed at *all* employees without any proven relationship to incipient community dangers. In fact, the very classification of employees in the Pittsburgh Ordinance condemned by petitioner limits the ordinance to those employees, i.e., police officers whose job is particularly and peculiarly sensitive. Under the Pittsburgh Ordinance Petitioner's right of political association is not abridged, but he cannot remain in the uniform of the Pittsburgh Police force and use that uniform as aid to a candidacy to party or political office.

Thus, none of the decisions relied on by the Petitioner, nor any other reported decisions of which we are aware, deal specifically with the precise issue in the instant case, a limited restriction on political activity by police officers. We submit that the narrow thrust of the Pittsburgh Ordinance is not inconsistent with the decisions from other jurisdictions relied upon by Petitioner.

CONCLUSION

Wherefore, it is respectfully submitted that this Honorable Court should refuse to allow an appeal in this case

where all of the issues which have been raised by the Petitioner have either been previously decided by the Supreme Court of the United States and the Supreme Court of Pennsylvania or are completely unfounded and without substance.

ROBERT E. DAUER,
Assistant City Solicitor,
City of Pittsburgh,
313 City-County Building,
Pittsburgh, Pa. 15219.

Of Counsel:

MARION K. FINKELHOR,
City Solicitor,
CYRIL A. FOX, JR.,
Assistant City Solicitor.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the following Answer to Petition for a Writ of Certiorari to the County Court of Allegheny County, Pennsylvania (now the Common Pleas Court—Civil Division) at No. A. 1744 of 1967, upon all parties of record in this proceeding by mailing, by first class (certified mail), postage prepaid, a copy to each party.

ROBERT E. DAUER

Dated 1969,

Pittsburgh, Pennsylvania

SECTION 47.

BUREAU OF POLICE

Superintendent	$ 8,000.00 per annum
Assistant Superintendent	5,693.00 per annum
Chief Clerk	3,689.00 per annum
Police Photographer	3,908.00 per annum
Two Stenographer-Clerks	2,979.00 each per annum
Stenographer-Record Clerk	2,280.00 per annum
Two Stenographer-Clerks	2,686.00 each per annum
Stenographer-Clerk	2,100.00 per annum
Stenographer	2,686.00 per annum
Clerk	2,686.00 per annum
Clerk	2,538.00 per annum
Clerk	2,392.00 per annum
Messenger	2,538.00 per annum
Telephone Operator	2,339.00 per annum
Inspector of Traffic	4,653.00 per annum
Seven Inspectors of Police	4,653.00 each per annum
Lieutenant of River Patrol	3,908.00 per annum
Seven Lieutenants of Traffic	3,908.00 each per annum
31 Lieutenants	3,908.00 each per annum
35 Sergeants	3,629.00 each per annum
16 Turnkeys	3,418.00 each per annum
1026 Patrolmen:	
First Year	2,979.00 each per annum
Second Year	3,127.00 each per annum

Third Year	3,275.00 each per annum
Fourth Year	3,[illegible].00 each per annum
Four Special Officers	2,973.00 each per annum
Investigator Assigned to Criminal Court	3,891.00 per annum
Inspector of Detectives	4,653.00 per annum
Police Investigator of Child Delinquency	4,538.00 per annum
Captain of Detectives	4,307.00 per annum
Two Lieutenants of Detectives	4,006.00 each per annum
37 Detectives	3,891.00 each per annum
15 Precinct Detectives	3,418.00 each per annum
Captain of Mounted Police	4,000.00 per annum
Chief Identification Officer	3,908.00 per annum
Identification Officer	3,418.00 per annum
Two Assistant Identification Officers	3,050.00 each per annum
Three Signal Service Operators	4,075.00 each per annum
Five Assistant Signal Service Operators	4,075.00 each per annum
Woman Police Captain	3,141.00 per annum
Woman Police Lieutenant	2,538.00 per annum
13 Women Police	2,392.00 each per annum
Chief Radio Operator	5,136.00 per annum
Three Radio Operators	4,836.00 each per annum
Five Assistant Radio Operators	4,836.00 each per annum
14 Matrons	2,254.00 each per annum
Three Chauffeurs	2,700.00 each per annum

One Hundred Eighty School Guards-10 months each, without deduction for school vacation and holidays,

EXHIBIT "A"

except during the months of July and August 200 days each — 3.50 each per day

In addition to the above, each of the following employees in the Bureau of Police shall be paid during the month of April of each year an additional sum of $75.00 for the purchase of uniforms:

Superintendent

Assistant Superintendent

Inspector

Lieutenant

Sergeant

Turnkey

Precinct Detective

Patrolman

Special Officer

EXHIBIT "A"

~~SECTION That any Ordinance or part of Ordinance, conflicting with the provisions of this Ordinance, be and the same is hereby repealed so far as the same affects this Ordinance.~~

Ordained and enacted into a law in Council, this 23rd day of December A. D. 1949

Thomas E. Kelgallen
President of Council.

Attest: George Bothner
Clerk of Council.

Mayor's Office Dec 24 1949

Approved: David L. Lawrence
Mayor.

Attest: John J. O'Keefe
Mayor's Secretary.

Recorded in Ordinance Book, Vol. 56 Page 327, 24th day of Dec 1949

Pittsburgh, Pa
February 14, 1950

I do hereby certify that this is a true and correct copy of Section 47, of Ordinance No. 621 of Series 1949, which is of record in the office of the City Clerk.

Louis C. DiMarco
City Clerk

EXHIBIT "A"